

Office of the Secretary, Interior

§ 11.15

(kk) *Responsible party or parties* and *potentially responsible party or parties* means a person or persons described in or potentially described in one or more of the categories set forth in section 107(a) of CERCLA.

(ll) *Restoration or rehabilitation* means actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided, when such actions are in addition to response actions completed or anticipated, and when such actions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(mm) *SDWA* means the Safe Drinking Water Act, 42 U.S.C. 300f-300j-10.

(nn) *Services* means the physical and biological functions performed by the resource including the human uses of those functions. These services are the result of the physical, chemical, or biological quality of the resource.

(oo) *Site* means an area or location, for purposes of response actions under the NCP, at which oil or hazardous substances have been stored, treated, discharged, released, disposed, placed, or otherwise came to be located.

(pp) *Surface water resources* means the waters of the United States, including the sediments suspended in water or lying on the bank, bed, or shoreline and sediments in or transported through coastal and marine areas. This term does not include ground water or water or sediments in ponds, lakes, or reservoirs designed for waste treatment under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901-6987 or the CWA, and applicable regulations.

(qq) *Technical feasibility or technically feasible* means that the technology and management skills necessary to implement an Assessment Plan or Restoration and Compensation Determination Plan are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time.

(rr) *Trustee or natural resource trustee* means any Federal natural resources management agency designated in the NCP and any State agency designated by the Governor of each State, pursu-

ant to section 107(f)(2)(B) of CERCLA, that may prosecute claims for damages under section 107(f) or 111(b) of CERCLA; or an Indian tribe, that may commence an action under section 126(d) of CERCLA.

(ss) *Type A assessment* means standard procedures for simplified assessments requiring minimal field observation to determine damages as specified in section 301(c)(2)(A) of CERCLA.

(tt) *Type B assessment* means alternative methodologies for conducting assessments in individual cases to determine the type and extent of short- and long-term injury and damages, as specified in section 301(c)(2)(B) of CERCLA.

(uu) *Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5171, Feb. 22, 1988; 59 FR 14281, Mar. 25, 1994]

§ 11.15 What damages may a trustee recover?

(a) In an action filed pursuant to section 107(f) or 126(d) of CERCLA, or sections 311(f) (4) and (5) of the CWA, a natural resource trustee who has performed an assessment in accordance with this rule may recover:

(1) Damages as determined in accordance with this part and calculated based on injuries occurring from the onset of the release through the recovery period, less any mitigation of those injuries by response actions taken or anticipated, plus any increase in injuries that are reasonably unavoidable as a result of response actions taken or anticipated;

(2) The costs of emergency restoration efforts under § 11.21 of this part;

(3) The reasonable and necessary costs of the assessment, to include:

(i) The cost of performing the preassessment and Assessment Plan phases and the methodologies provided in subpart D or E of this part; and

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(ii) Administrative costs and expenses necessary for, and incidental to, the assessment, assessment planning, and restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken; and

(4) Interest on the amounts recoverable as set forth in section 107(a) of CERCLA. The rate of interest on the outstanding amount of the claim shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. Such interest shall accrue from the later of: The date payment of a specified amount is demanded in writing, or the date of the expenditure concerned;

(b) The determination of the damage amount shall consider any applicable limitations provided for in section 107(c) of CERCLA.

(c) Where an assessment determines that there is, in fact, no injury, as defined in § 11.62 of this part, the natural resource trustee may not recover assessment costs.

(d) There shall be no double recovery under this rule for damages or for assessment costs, that is, damages or assessment costs may only be recovered once, for the same discharge or release and natural resource, as set forth in section 107(f)(1) of CERCLA.

(e) Actions for damages and assessment costs shall comply with the statute of limitations set forth in section 113(g), or, where applicable, section 126(d) of CERCLA.

[51 FR 27725, Aug. 1, 1986, as amended at 52 FR 9095, Mar. 20, 1987; 53 FR 5172, Feb. 22, 1988; 59 FR 14281, Mar. 25, 1994; 61 FR 20609, May 7, 1996]

§ 11.16 [Reserved]

§ 11.17 Compliance with applicable laws and standards.

(a) *Worker health and safety.* All worker health and safety considerations specified in the NCP shall be observed, except that requirements applying to response actions shall be taken to apply to the assessment process.

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(b) *Resource protection.* Before taking any actions under this part, particularly before taking samples or making determinations of restoration or replacement, compliance is required with any applicable statutory consultation or review requirements, such as the Endangered Species Act; the Migratory Bird Treaty Act; the Marine Protection, Research, and Sanctuaries Act; and the Marine Mammal Protection Act, that may govern the taking of samples or in other ways restrict alternative management actions.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5172, Feb. 22, 1988]

§ 11.18 Incorporation by reference.

(a) The following publications or portions of publications are incorporated by reference:

(1) Part II only (Fish-Kill Counting Guidelines) of “Monetary Values of Freshwater Fish and Fish-Kill Guidelines,” American Fisheries Society Special Publication Number 13, 1982; available for purchase from the American Fisheries Society, 5410 Grosvenor Lane, Bethesda, MD 20814, ph: (301) 897-8616. Reference is made to this publication in §§ 11.62(f)(4)(i)(B) and 11.71(l)(5)(iii)(A) of this part.

(2) Appendix 1 (Travel Cost Method), Appendix 2 (Contingent Valuation (Survey) Methods), and Appendix 3 (Unit Day Value Method) only of Section VIII of “National Economic Development (NED) Benefit Evaluation Procedures” (Procedures), which is Chapter II of *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, U.S. Department of the Interior, Water Resources Council, Washington, DC, 1984, DOI/WRC/-84/01; available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; PB No. 84-199-405; ph: (703) 487-4650. Reference is made to this publication in § 11.83(a)(3) of this part.

(3) “Uniform Appraisal Standards for Federal Land Acquisition” (Uniform Appraisal Standards), Interagency Land Acquisition Conference, Washington, DC, 1973; available for purchase